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No. 80-401

In the Supreme Court of the United States

October Term, 1980

HARRY J. RUBIN and MARGARET C. RUBIN,
Appellants

v.

SIDNEY GLASER, Director of The Division of Taxation, Department of The Treasury, State of New Jersey, and A. JAMES REEVES, Tax Assessor, Long Beach Township, Ocean County, New Jersey,
Appellees

On Appeal From the Supreme Court of New Jersey

JURISDICTIONAL STATEMENT

HARRY J. RUBIN
LIVERANT, SENFT AND COHEN
Attorneys for Appellants

15 South Duke Street
P. O. Box 72
York, Pennsylvania 17405
(717) 845-2641

Murrelle Printing Co., Box 100, Sayre, Pa. 18840—(717) 882-0401

JURISDICTIONAL STATEMENT

Harry J. Rubin and Margaret C. Rubin, appellants herein, pray that an order be entered noting probable jurisdiction of their appeal from a final judgment of the Supreme Court of New Jersey entered in this case on June 19, 1980.

QUESTIONS PRESENTED

1. Does the New Jersey Homestead Rebate Act, §1, N.J. Stat. Ann. 54:4-3.80, which grants general property tax relief for residential property owned and occupied as a principal residence by New Jersey citizens and residents, violate the Privileges and Immunities Clause, Art. IV, §2, cl. 1, of the United States Constitution by denying such relief to Appellants, citizens and residents of Pennsylvania who own residential property in New Jersey?

2. Does the aforesaid provision of the New Jersey Homestead Rebate Act violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

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OPINION BELOW

The opinion of the Supreme Court of New Jersey (Appendix A, pp. A-1-A-14) is reported at N.J. , A.2d .

JURISDICTION

This was a proceeding initiated by Appellants' filing a claim for a property tax rebate under the New Jersey Homestead Rebate Act. This claim was denied, successively, by the Tax Assessor of Long Beach Township, Ocean County, New Jersey, by the Ocean County Board of Taxation, by the Division of Taxation, New Jersey Treasury Department, by the New Jersey Superior Court, Appellate Division, and, finally, by the Supreme Court of New Jersey.

The opinion and judgment of the Supreme Court of New Jersey was entered on June 19, 1980. The notice of appeal was filed in the Supreme Court of New Jersey on July 23, 1980.

The jurisdiction of this Court to review the judgment below by appeal is conferred by 28 U.S.C. §§1257(2) and 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. Article IV, section 2, clause 1 of the Constitution of the United States provides as follows:

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

2. Section 1 of the Fourteenth Amendment of the Constitution of the United States provides as follows:

> "Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. The first sentence of section 1 of the New Jersey Homestead Rebate Act, N.J. Stat. Ann. 54:4-3.80, provides as follows:

> "Every citizen and resident of this State shall be entitled, annually, to a homestead rebate on a dwelling house and the land upon which such dwelling house is situated, or on a dwelling house assessed as real estate situated on land owned by another or others which constitutes the place of his domicile and which is owned and used by him as his principal residence."

STATEMENT OF THE CASE

Appellants, husband and wife, are domiciled in the Commonwealth of Pennsylvania. They are the owners of a residential property located in Long Beach Township, Ocean Township, Ocean County, New Jersey. They have owned that property since 1965. They own no other property in New Jersey.

As owners of real estate in New Jersey, Appellants are liable for and pay real estate taxes for local, county and school purposes. In 1976 these taxes amounted to $1,269.77. These taxes are not collected or used for any purpose other than support of New Jersey governmental and school functions and operations.

No distinction of any kind is made between real estate owned by persons who are not domiciled in New Jersey and real estate owned by persons who are domiciled in New Jersey for purposes of local real estate assessment and taxation. In other words, all residential real estate in Long Beach Township is assessed and taxed on exactly the same basis and in exactly the same way. The domicile of the owner is irrelevant. Non-New Jerseyans pay the same property taxes as New Jerseyans.

Appellants duly filed a claim for a homestead tax rebate with the tax assessor of Long Beach Township, Ocean County, New Jersey. This claim was disallowed on the ground that Appellants were not a "citizen and resident of the State of New Jersey as of October 1, 1976." Appellants then duly filed an appeal to the

Ocean County Board of Taxation. This appeal was denied.

Appellants then filed a petition of appeal before the New Jersey Division of Tax Appeals. Following an evidentiary hearing before Lario, J., at which Appellants raised the constitutional questions sought to be reviewed here, judgment was entered on December 21, 1977, dismissing the appeal and affirming the judgment of the Ocean County Board of Taxation. On January 5, 1978, the Division of Tax Appeals handed down a formal opinion, stating in part:

> "Petitioners urge that the Act is unconstitutional. This issue connot be determined by this Division."

Appellants then submitted a notice of appeal to the Superior Court of New Jersey, Appellate Division. This notice of appeal was docketed on January 30, 1978, at Docket No. A-2043-77. Following the filing of briefs before that Court by the parties, oral argument was held on December 11, 1978. In both their brief and at oral argument Appellants questioned the validity of the New Jersey statute under the Privileges and Immunities clause and the Equal Protection clause. On February 1, 1979, the Appellate Division handed down an opinion affirming the decision of the Division of Tax Appeals and rejecting Appellants' constitutional arguments.

On March 6, 1979, Appellants filed a notice of appeal with the Supreme Court of New Jersey. Briefs were again filed before that Court, and oral argument was held on February 19, 1980. In both their brief and oral argument Appellants again asserted that the

New Jersey statute violated both the Privileges and Immunities Clause of Article IV, §2, cl. 1 and the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court of New Jersey specifically rejected these arguments (Appendix A, pp. A-5, 6 and A-11) and affirmed the validity of the statute.

THE QUESTIONS ARE SUBSTANTIAL

In its effort to sustain its own state's statute, the Court below gave lip service to this Court's pronouncements as to the scope and purpose of the privileges and immunities clause and the equal protection clause; but it proceeded to ignore the true meanings of these decisions and their importance and relevance to this case. In so doing, the court below slipped into a superficial analysis of the New Jersey statute and of the discrimination inherent in its application to appellants.

First. Freedom from discriminatory taxation is a fundamental right guaranteed to nonresidents of a taxing state by the privileges and immunities clause. *Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60; *Austin v. New Hampshire*, 420 U.S. 656; see also *Corfield v. Coryell*, 6 F Cas 546, 552 (No. 3,230) (CCED Pa 1825). The court below briefly acknowledged this principle and its applicability here by citing *Baldwin v. Montana Fish & Game Commission*, 436 U.S. 371, and *Hicklin v. Orbeck*, 437 U.S. 518, at the outset of its discussion; but it then proceeded both (a) to draw a faulty analogy in the context of state taxation and (b) to misapply the second half of this Court's two-pronged analysis of the privileges and immunities clause.

First, the court below ignored the obvious distinction between direct property taxes, on the one hand, and excise and income taxes, on the other, in this con-

text. In its attempt to lessen the importance of the fundamental nature of the nonresident's right to be free from discriminatory taxation, it cited several cases in which differences in state income taxation were sustained. It ignored, however, the facts that in the income tax context the differences were particularly and peculiarly related to the subject of the tax—income—and that for a nonresident the particular area of disallowance thus was particularly and peculiarly unrelated to the nonresident taxing state. For example, the court below concluded this phase of its discussion with a reference to *Berry v. State Tax Comm'n*, 241 Ore. 580, 397 P.2d 780 (1964), dismissed for want of a substantial federal question, 382 U.S. 16 (1965), properly sustaining a provision in Oregon's income tax statute which allowed only residents to deduct personal expenses (e.g., interest, medical expenses) and allowed nonresidents to deduct only those expenses related to the income earned by them in Oregon.

Nothing could be less pertinent to the form of discrimination involved in denying a real property tax reduction to nonresidents. Appellants' real property in New Jersey is the same as all other real property in New Jersey. It is appraised identically and taxed identically. It has no connection with appellants' Pennsylvania residence. Real property taxation, of all forms of taxation, would seem especially susceptible to the type of discrimination forbidden by the privileges and immunities clause. This fact was simply ignored by the court below.

Second, in moving to the second part of the relevant constitutional analysis, the court below limited its analysis to the issue of "substantial relationship" be-

tween the problem involved and the legislative solution. In so doing, it avoided any discussion of the involvement of nonresidents in the problem (or "evil") and, additionally, completely overlooked the inappropriateness of the statutory response.

The court below characterized the purpose of the rebate act as one "meant to assist the taxpayer in times of escalating property taxes to keep a roof over his head" (Appendix, p. A-10). While one may well agree with the worthiness of this goal, one is hard put to recognize how a nonresident property owner is a "peculiar source of the evil" (burdensome property taxes) which the statute seeks to remedy. Quite the contrary is true. A nonresident, while paying the same property taxes as a resident, is less of a burden to the governmental and educational systems of New Jersey than is the resident. In other words, if property taxes are a *quid* paid in return for the *quo* of governmental and educational services, the nonresident—who uses fewer governmental services and does not use the public schools at all—can hardly be said to be responsible for New Jersey's ever-increasing property tax burden.

Further, the rebate act itself can hardly be characterized as reasonably (let alone substantially) related to the problem involved in helping a property owner "keep a roof over his head." In this respect it both overreaches and underreaches. It overreaches because its grant of tax reduction extends to all New Jersey resident property owners, rich and poor alike, those who need relief and those who do not. It underreaches because it excludes all nonresidents, rich and poor alike, those who need relief and those who do not.

In short, nonresidents do not contribute to the problem the statute was aimed at solving; and the statute is an unusually inappropriate response to the problem. While the court below made a passing reference (Appendix, p.A-11) to a connection between the statute and New Jersey's personal income tax act (a matter not raised in any relevant way by either party), its purpose in so doing is hard to fathom. While New Jersey, for political or other reasons, may have chosen in some way to tie imposition of its income tax to its grant of property tax relief, there is nothing in either statute which denies property tax relief to New Jersey residents who pay no income tax or grants property tax relief to nonresidents who do pay New Jersey income tax (as appellants most certainly would do if, for example, they chose to rent their New Jersey property). The presence of New Jersey's income tax, therefore, does not justify the fundamental and unreasonable discrimination practiced against nonresidents.

Second. The least untenable ground found in the opinion below, at least superficially, is that based upon the statutory rebate limitation to property which constitutes a taxpayer's principal residence. Because of this, noted the court below, some [unknown number of] New Jersey residents do not get the rebate. This group would consist of New Jerseyans who own two residential properties and would be entitled to only one rebate and those who own only one residential property but do not occupy it as a principal residence. Because of this, according to the court below, there is no discrimination against appellants.

In the context of invalid discrimination only the second of these categories would be pertinent. Ap-

pellants make no argument that New Jersey must grant a property owner more than one rebate; and if appellants owned two residential properties in New Jersey, they would be seeking only one rebate, not two (but, of course, would be denied both).

But, even the presence of the second group raises no bar to appellants' claim. New Jersey's denial of a rebate to its own citizens—for whatever reason—does not implicate the privileges and immunities clause. Additionally, the New Jerseyan, if he wants the rebate, may simply move to his New Jersey residential property and immediately qualify for it. The nonresident cannot do this without giving up his state citizenship and residence; he cannot establish his principal residence at his New Jersey property and remain a resident of his own state.

It must be remembered that the statute, at the outset, limits its grant of tax relief to "Every citizen and resident of [New Jersey]," thus precluding relief for a nonresident in all cases. The "principal residence" concept adds or subtracts nothing from his disfavored position. It simply supports the statute's limitation to citizens of New Jersey.

More importantly, however, Appellants perceive this comment by the court below as implying that the case involves no privileges and immunities issue at all simply because some New Jersey residents also do not qualify for the rebate. This unstated position is unjustified.

First, this Court has never held that all nonresidents must be disadvantaged relative to all residents. Simply put, it is sufficient that all

nonresidents be disadvantaged. That not all residents are benefited is no bar to the claim of discrimination under the privileges and immuntites clause by a nonresident. For example, admission to the bar of a state is usually limited, first, to residents (i.e., all nonresidents are excluded) and, second, only to residents who meet certain qualifications beyond mere residency. The propriety of these limitations is recognized, but no one questions the applicability (as distinguished from the effect) of the privileges and immunities clause to the nonresident's position.

For further example, several cases have sustained nonresident claims under the privileges and immunities clause against municipal residence restrictions even though other residents of the same state in which the municipality is located were equally barred. *Fecheimer v. Louisville*, 84 Ky. 306, 2 S.W. 65 (1886), and *State v. Nolan*, 108 Minn. 170, 122 N.W. 255 (1909).

Second, the purposes for which the privileges and immunities clause was adopted were to promote national unity and to protect nonresidents from discrimination by a (state) government in which they had no voice. *Baldwin v. Montana Fish and Game Commission*, 436 U.S. 371. Where all nonresidents are disadvantaged—as here—application of the privileges and immunities clause to their claim advances both of these purposes notwithstanding the presence of some residents who are otherwise somewhat less disadvantaged.

What is present here is nothing more or less than a classic situation in which a state has taken advantage of the powerless position of nonresidents on the state

political scene to work its will on this defenseless group. In as particularly sensitive and basic an area as real property taxation where nonresidents contribute equally and benefit less, this form of discrimination should not be countenanced.

The opinion below unduly restricts the scope of the privileges and immunities clause and does damage to the purpose of the clause. In the context of real property taxation nonresidents should be protected from discriminatory state burdens of the kind present here. Otherwise, their status in the nonresident state would be eroded to one of total defenselessness.

Third. Equal protection considerations also arise from the discrimination present in the New Jersey statute. While much of the burden of this discrimination is absorbed by the prior considerations under the privileges and immunities clause, appellants urge the Court to recognize the evil inherent in the property tax classification made by New Jersey and its invidious effect upon nonresidents. Further, appellants suggest that this case presents ample reason to hold that nonresidency should be afforded "suspect class" status for equal protection purposes where unequal taxation is present and that New Jersey be required to advance some compelling state interest in order to sustain its statute.

Appellants already have noted (p. 4) both that the imposition of real property taxes in New Jersey involves no deference to nonresident property owners and that nonresident property owners receive less in return for payment of these taxes. Appellants already have noted (pp. 12-13), too, the obvious fact that they, like all nonresidents, have no vote or other voice

in New Jersey's legislative halls and executive offices. In this context, therefore, the explicit classification of the statute is particularly harmful to and destructive of equal protection.

The court below suggested two reasons in support of its position. First, it stated (Appendix, pp. A-11, A-12) that the rebate act imposes "no meaningful restriction" on the "fundamental right to travel," citing a series of durational residency cases both invalidating and upholding state statutes. This is not, however, an analogous case. A state statute granting a property tax rebate only to persons who have resided in the state for one year is (a) hardly likely to be enacted by any state and (b) unlikely to pass muster under the equal protection clause if it were. But, even if such a statute necessarily involved restrictions on the right to travel, then surely that right is as much, if not more, penalized by the flat prohibition involved here as it would be by a "one-year residency" statute.

Here, appellants are told by New Jersey that even if they choose to own property in the state and to pay taxes on that property, they cannot qualify for tax relief unless they give up their residency in Pennsylvania. Considering that appellants do not seek a positive benefit (e.g. free medical care, right to vote) from New Jersey, but seek only to recover an equal share of something they have paid to New Jersey, the state's refusal substantially infringes appellant's right to travel freely and without penalty.

The other side of the court below's position is that "bona fide residence requirements" (Appendix, p. A-13) are valid, citing *Memorial Hospital v. Maricopa County*, 415 U.S. 250, and *Dunn v. Blumstein*, 405

U.S. 330. This is true, but the flat statement ignores the purpose of the requirement. If "bona fide residence" were a requirement for the payment of property taxes, it might well be upheld as a requirement for a rebate. Nothing is further from the actual truth, however. Appellants pay equal property taxes on their New Jersey property regardless of their residence; they should be entitled to an equal reduction in those taxes regardless of the residence.

The court below concluded by repeating (Appendix, pp. A-13, A-14) one of the fundamental fallacies in its opinion and of the rebate statute. It again referred to the importance of providing property tax relief in order to relieve the burden of property taxation. Appellants again suggest that a narrowly-drawn statute designed to give such relief only where truly needed would provide an appropriate and valid classification, but they again note that New Jersey's statute makes no attempt to do this. It simply excludes all nonresidents and includes residents regardless of need. Having opted for a broad grant of tax relief, New Jersey should not be allowed to work its discriminatory will against nonresidents.

CONCLUSION

The decision of the court below is not supported by the grounds on which it rests, and the questions are substantial. Appellants request this Court, therefore, to take jurisdiction of the present appeal.

Respectfully submitted,
HARRY J. RUBIN,
LIVERANT, SENFT AND COHEN
Attorneys for Appellants

15 South Duke Street
P. O. Box 72
York, Pennsylvania 17405
(717) 845-2641

APPENDIX

APPENDIX A

OPINION AND JUDGMENT BELOW

SUPREME COURT OF NEW JERSEY
A-71 September Term 1979

HARRY J. RUBIN and MARGARET C. RUBIN,
Appellants,

v.

SIDNEY GLASER, Director of the Division of Taxation, Department of the Treasury of the State of New Jersey, and A. JAMES REEVES, Tax Assessor, Long Beach Township, Ocean County, New Jersey,
Respondents.

Argued February 19, 1980—Decided June 19, 1980

On appeal from the Superior Court, Appellate Division, whose opinion is reported at 166 *N.J.Super.* 258 (1979).

Harry J. Rubin argued the cause *pro se.*

Stephen Skillman, Assistant Attorney General, argued the cause for respondent Sidney Glaser, Director of the Division of Taxation (*John J. Degnan*, Attorney General of New Jersey, attorney; *Harry Haushalter*, Deputy Attorney General, on the brief).

The opinion of the Court was delivered by SCHREIBER, J.

Plaintiffs Harry J. Rubin and his wife Margaret have challenged the constitutionality of the Homestead Rebate Act, *N.J.S.A.* 54:4-3.80 *et seq.* Denied a rebate with respect to real property taxes paid on their summer home, they filed a claim with the local tax assessor for a Homestead Tax Rebate for the year 1977. Upon rejection of their claims, plaintiffs unsuccessfully sought relief from the County Board of Taxation and then the Division of Tax Appeals. When their appeal to the Appellate Division failed, 166 N.J. Super. 258 (1979), they filed an appeal with this Court. *R.* 2:2-1(a).

The facts are undisputed. Plaintiffs, residents of York, Pennsylvania, have been domiciled in Pennsylvania all their lives. Harry J. Rubin, a member of the Pennsylvania Bar, is self-employed. His wife, Margaret C. Rubin, is a social worker employed by the Pennsylvania Department of Public Welfare. In 1965 they acquired a house in Long Beach Township, New Jersey, which they occupy for approximately four to five weeks during the summer and intermittently throughout the year. It serves as a vacation home.

Plaintiffs' contentions are threefold. They assert first that the Legislature in enacting the Homestead Rebate Act exceeded the authority vested in it by Article VIII, §1, par. 5 of the New Jersey Constitution; second, that the Act contravenes the Privileges and Immunities Clause of the federal Constitution, Art. IV, §2, cl. 1; and third, that it conflicts with the Equal Protection Clause of the Fourteenth Amendment.

I.

The Homestead Rebate Act, in pertinent part, provides that:

> Every citizen and resident of this State shall be entitled, annually, to a homestead rebate on a dwelling house and the land upon which such dwelling house is situated, or on a dwelling house assessed as real estate situated on land owned by another or others *which constitutes the place of his domicile and which is owned and used by him as his principal residence.* [*N.J.S.A.* 54:4-3.80(a); emphasis added]

It was enacted by the Legislature in response to Article VIII, §1, par. 5 of the state Constitution which provides that:

> The Legislature may adopt a homestead statute which entitles homeowners, residential tenants and net lease residential tenants to a rebate or a credit of a sum of money related to property taxes paid by or allocable to them at such rates and subject to such limits as may be provided by law. Such rebates or credits may include a differential rate or credit to citizens and residents who are of the age of 65 or more years, or less than 65 years of age who are permanently and totally disabled according to the provisions of the Federal Social Security Act, or are 55 years of age or more and the surviving spouse of a deceased citizen or resident of this State who during his lifetime received, or who upon the adoption of this amendment and the enactment of implementing legislation, would have been entitled to

receive a rebate or credit related to property taxes.

The first sentence of the constitutional amendment was adopted at the general election of November 4, 1975, and the second at the general election of November 2, 1976.

The plaintiffs admit that they do not satisfy the statutory criterion, namely, that their New Jersey summer home is their principal residence. However, they contend that the Homestead Rebate Act unconstitutionally narrows the rebate envisioned in Article VIII, §1, par. 5 by limiting it to dwelling houses and land owned and used by domiciliaries as their principal residences.[1]

We reject that contention. The constitutional provision does not define the word "homestead." Constitutional history casts no light on its meaning. In common usage, it has been defined as "[t]he land and buildings thereon occupied by the owner as a home for himself and his family." *Webster's New International Dictionary*, Second Edition (1952). "The word 'homestead' ... in popular parlance ... [means] the home or residence of the family; the term signifies the dwelling house in which the family resides, with the usual and customary appurtenances, including outbuildings that are necessary or convenient for family use, and lands that are devoted to the same purpose." 40 *Am. Jur.* 2d, §1 at 115-116 (1968). The word "homestead" has previously been employed by the

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[1]Plaintiffs' standing to maintain this action has not been raised and we are not passing upon that issue. *Cf. Salorio v. Glaser*, N.J. , (1980)(slip op. at 6-7).

Legislature in the homestead exemption statute. *R.S.* 2:26-110 *et seq.* That act, which exempted from execution property up to a value of $1,000, was not reenacted in 1952 upon the revision of Title 2 into 2A. The statute contemplated a homestead as a lot and building "occupied as a residence and owned by the debtor, being a householder and having a family...."[2] *R.S.* 2:26-110.

Whether "homestead" in the constitutional amendment referred to only one home need not be decided. Unquestionably, the Constitution envisages vesting the Legislature with discretionary powers within the constitutional framework. For the Legislature "may" adopt a homestead statute "subject to such limits as may be provided [in the Legislature's judgment] by law." Art. VIII, §1, par. 5. Therefore, the Legislature is empowered, subject to federal and state constitutional limitations, to define homestead. Since the Legislature adopted a restrictive approach, by defining homestead in terms of the principal residence and domicile, it is only necessary that we pass on the validity of the legislative enactment.

II.

The Homestead Rebate Act's application solely to the house and land which serve as a principal residence does not violate the Privileges and Im-

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[2]Although the statute was not reenacted in Title 2A, it may have vested rights in homeowners where the necessary recordation in the homestead exemption book has been made and notice duly published. We do not decide this issue today. It is clear that after January 1, 1952, no additional homestead estates could be created.

munities Clause, Art. IV, §2, cl. 1, or the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The Privileges and Immunities Clause provides that:

> The citizens of each State shall be entitled to all the Privileges and Immunities of Citizens in the several States.

In *Paul v. Virginia*, 75 U.S. 168, 19 L.Ed. 357 (1869), Justice Field explained the purpose of the Clause in the following manner:

> It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States, and egress from them; it insures to them in other States the same freedom possessed by the citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. [*Id.* at 180, 19 L.Ed. at 360]

More recently the Supreme Court stated that this constitutional provision

> was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy. For protection of such equality the citizen of State A was not to be restricted to the uncertain remedies afforded by

> diplomatic processes and official retaliation. [*Toomer v. Witsell*, 334 U.S. 385, 395, 68 S.Ct. 1156, , 92 L.Ed. 1460, 1471 (1948); footnotes omitted.]

In *Salorio v. Glaser*, N.J. at (slip op. at 20-22), Justice Pashman noted the United States Supreme Court's two-pronged test to evaluate the validity of distinctions between residents and nonresidents. First, the Clause governs only those rights or activities which are fundamental in the sense that interference would "hinder the formation, the purpose, or the development of a single Union...." *Baldwin v. Montana Fish & Game Comm'n*, 436 U.S. 371, 383, 98 S.Ct. 1852, , 56 L.Ed.2d 354, 365 (1978). "Only with respect to those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, equally." *Ibid.* See also *Corfield v. Coryell*, 6 F. Cas. 546, 552 (C.C.E.D. Pa. 1823)(No. 3,230). Second, though such a fundamental interest may be involved, the distinction between residents and nonresidents may be justified. Thus, in *Toomer v. Witsell*, the Court wrote:

> Like many other constitutional provisions, the privileges and immunities clause is not an absolute. It does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do

> exist and whether the degree of discrimination bears a close relation to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures. [334 U.S. at 396, 68 S.Ct. at , 92 L.Ed. at 1471; footnote omitted]

See also *Hicklin v. Orbeck*, 437 U.S. 518, 525-526, 98 S.Ct. 2482, , 57 L.Ed.2d 397, 404 (1978).

A state may not unjustifiably discriminate between residents and nonresidents in the exercise of its taxing power. See *Austin v. New Hampshire*, 420 U.S. 656, 662-664, 95 S.Ct. 1191, , 43 L.Ed.2d 530, 535-537 (1975); *Ward v. Maryland*, 79 U.S. 418, 20 L.Ed. 449 (1871). However, the Court has upheld and sanctioned differences in the taxation context.

In *Travelers' Insurance Co. v. Connecticut*, 185 U.S. 364, 22 S.Ct. 673, 46 L.Ed. 949 (1901), the Court upheld a Connecticut tax imposed upon stockholders of domestic corporations. Resident stockholders could deduct an allocable share of real estate taxes paid by the corporation from the fair market value of the stock. Nonresidents could not make that deduction. The Court reasoned that the nonresidents were being taxed in proportion to the benefits bestowed upon them by the taxing state.

> It is enough that the state has secured a reasonably fair distribution of burdens, and that no intentional discrimination has been made against nonresidents. [185 U.S. at 371, 22 S.Ct. at , 46 L.Ed. at 954]

See also *Davis v. Franchise Tax Bd.*, 71 Cal. App. 3d 998, 139 Cal. Rptr. 797 (Ct. App. 1977), dismissed for want of substantial federal question, 434 U.S. 1055, 98 S.Ct. 1222, 55 L.Ed.2d 755 (1978), sustaining California income tax provision permitting only residents to utilize income averaging statute; *Wheeler v. Vermont*, 127 Vt. 361, 249 A.2d 887 (Sup. Ct. 1969), dismissed for want of substantial federal question, 306 U.S. 4, 90 S.Ct. 24, 24 L.Ed.2d 4 (1969), affirming differential income tax rates placed on Vermont residents as opposed to nonresidents; *Anderson v. Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (Sup. Ct. 1967), dismissed for want of substantial federal question, 390 U.S. 714, 88 S.Ct. 1418, 20 L.Ed.2d 254 (1968), upholding the validity of permitting only residents to take food sales tax expenses as a credit under the Nebraska income tax; *Berry v. State Tax Comm'n*, 241 Ore. 580, 397 P.2d 780 (Sup. Ct. 1964), dismissed for want of substantial federal question, 382 U.S. 16, 86 S.Ct. 57, 15 L.Ed.2d 12 (1965), affirming the propriety of a provision under the Oregon income tax law which allowed only residents to deduct certain personal expenses related to their place of residency.[3]

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[3]The Supreme Court has repeatedly stated that its "summary dismissals are ... to be taken as rulings on the merits ... in the sense that they rejected the 'specific challenges presented in the statement of jurisdiction' and left 'undisturbed the judgment appealed from.' " *Washington v. Yakima Indian Nation*, 439 U.S. 463, 476 n.20, 58 L.Ed.2d 740, 753, 99 S.Ct. 740, (1979)(citation omitted), quoting *Mandel v. Bradley*, 432 U.S. 173, 176, 53 L.Ed.2d 199, 205, 97 S.Ct. 2238, (1973). See *Hicks v. Miranda*, 422 U.S. 332, 343-345, 45 L.Ed.2d 223, 235-237, 95 S.Ct. 2238, (1975). While the Court has stated that "[t]hey do not ... have the same precedential value ... as

A principle which may be derived from these decisions is that state taxing statutes, conferring a benefit or advantage only on residents, do not run afoul of the Privileges and Immunities Clause, provided they bear a "close" or "substantial relationship" to a legitimate purpose independent of discrimination against nonresidents. *Hicklin v. Orbeck*, 437 U.S. at 525, 527, 98 S.Ct. at , , 57 L.Ed.2d at 404, 405; *Toomer v. Witsell*, 334 U.S. at 396, 68 S.Ct. at , 92 L.Ed. at 1471. The Homestead Rebate Act satisfies the requirements of the Privileges and Immunities Clause, bearing a close relationship to a proper purpose irrespective of the impact upon nonresidents.

First, we emphasize that the Act's application solely to principal places of residence is closely related to the beneficent purpose of alleviating the heavy realty tax burden. As Judge Morgan wrote for the Appellate Division, the rebate was meant to assist "the taxpayer in times of escalating property taxes to keep a roof over his head." 166 N.J. Super. at 265. The Legislature did not intend to foster ownership of property for a second home to be used for vacations or for purposes other than maintaining a principal residence.

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does an opinion of [the] Court after briefing and oral arguments on the merits," a summary dismissal does represent a view that the judgment appealed from was correct as to those federal questions raised and necessary to the decision. *Yakima Indian Nation*, 439 U.S. at 476 n.20, 99 S.Ct. at , 58 L.Ed.2d at 753; see *Edelman v. Jordan*, 415 U.S. 651, 670-671, 39 L.Ed.2d 662, , 94 S.Ct. 1347, (1974).

Second, this statutory aim was not directed against nonresidents. Thus, New Jersey residents who do not own a principal residence in the State are on the same footing as nonresidents. For example, a New Jersey resident whose principal place of residence is a rented apartment would not receive a rebate on a home he owned at the New Jersey shore. Moreover no one is entitled to a rebate of taxes paid on a second home. Thus, plaintiffs are treated the same as New Jersey residents who own a second home for summer vacations in New Jersey with respect to rebates on that second home.[4]

In passing, we note that the Legislature enacted the Homestead Rebate Act in conjunction with the New Jersey Gross Income Tax Act. *N.J.S.A.* 54A:1-1 *et seq.* Some of the revenues derived from the gross income tax were to be applied to the homestead rebates. *N.J.S.A.* 54A:9-25. Operation of the Homestead Rebate Act was contingent upon passage of the gross income tax. L. 1976, c. 72, §§15, 16. There is some nexus between those who own their principal residences in New Jersey and those who pay the New Jersey gross income tax. A nonresident who owns a summer home in New Jersey and earns no income in New Jersey, on the other hand, is not subject to the gross income tax.

Plaintiffs' contention with respect to the Equal Protection Clause is equally without merit. There has been no meaningful restriction on their fundamental

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[4]New Jersey residents have also been denied rebates if their property is only a seasonally occupied dwelling. See *Brown v. Lacey Tp.* (Div. of Tax Appeals, Dkt, No. HTR 2-77 (1977)).

right *to* travel and so the burden does not rest upon the State to establish a compelling state interest to justify the law. The Homestead Rebate Act does not penalize the exercise of the right to travel. That right is penalized when nonresidents are denied "a basic necessity of life" or a "fundamental" right. *Compare Memorial Hospital v. Maricopa Cty.*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974) (one-year residency requirement as a condition to an indigent's receipt of non-emergency hospital or medical care at a county's expense "penalizes" the right to travel), *Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972) (durational residency requirement for voting denied a "fundamental political right" and "penalized" the right to travel) and *Shapiro v. Thompson*, 394 U.S. 618, 89 S.CT. 1322, 22 L.Ed.2d 600 (1969) (one-year residency requirement for receipt of welfare benefits "penalizes" the right to travel) *with Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975) (upholding one-year residency requirement for divorce action within the state) and *Vlandis v. Kline*, 412 U.S. 441, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973) (upholding one-year residency requirement as a condition to lower tuition at state university). Denial of a homestead rebate on a vacation home does not rise to the level of a deprivation of "a basic necessity of life" or of a "fundamental" right. Furthermore, the homestead rebate is not denied to those persons, and only those persons, who have exercised their constitutional right of interstate migration. See *Dunn v. Blumstein*, 405 U.S. at 338, 92 S.Ct. at , 31 L.Ed. 2d at 281-282. Moreover, the Act contains no residential durational element of the type which has been held invalid where the individual has

been required to have resided within the state for a minimum period of time. The Supreme Court has expressly noted that in the absence of a durational residency issue, it did "not intend [ ] to 'cast doubt on the validity of appropriately defined and uniformly applied bona fide residence requirements.' " *Memorial Hosp. v. Maricopa Cty.*, 415 U.S. at 255, 94 S.Ct. at , 39 L.Ed.2d at 313, quoting *Dunn v. Blumstein*, 405 U.S. at 342 n.13, 92 S.Ct. at 995, 31 L.Ed.2d at 274. This being so, the statute need not be measured by the strict scrutiny standards.

Absent infringement of a fundamental right or discrimination against a suspect class,[5] equal protection is not denied if the legislative classification is reasonable and bears a rational relationship to a legitimate governmental objective. See *San Antonio School Dist. v. Rodriguez*, 411 U.S. 1, 40 93 S.Ct. 1278, , 36 L.Ed.2d 16, 47 (1973). We have recently adverted to the broad deference accorded legislation with respect to taxation programs. See *McKenney v. Byrne*, 82 N.J. 304 (1980), and cases cited therein. We agree fully with Judge Morgan, writing for the Appellate Division below, that:

> The classification here evidences the Legislature's attempt to blunt escalating property taxes that threaten a family's ability to continue living in their home. We have no doubt that lessening tax burdens for that essential reason, and denying

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[5]Even if denial of the rebate were limited to nonresidents, nonresidency is not a suspect classification. See *Baldwin v. Montana Fish & Game Comm'n*, 436 U.S. 371, 389-390, 98 S.Ct. 1852, , 56 L.Ed.2d 354, 368-369 (1978).

relief to less essential types of residential property ownership, is well within the Legislature's discretion.... [166 N.J. Super. at 268]

Affirmed.

Chief Justice Wilentz and Justices Sullivan, Pashman, Clifford and Pollock join in this opinion.

Justice Handler did not participate.

APPENDIX B

NOTICE OF APPEAL

Harry J. Rubin
15 South Duke St.
P.O. Box 72
York, PA 17405

IN THE SUPREME COURT OF NEW JERSEY

A-71 September Term 1979
Docket #15,720 A-2043-77

HARRY J. RUBIN and MARGARET C. RUBIN,
Appellants

v.

SIDNEY GLASER, Director of the Division of Taxation, Department of The Treasury of the State of New Jersey, and A. JAMES REEVES, Tax Assessor, Long Beach Township, Ocean County, New Jersey,
Appellees

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

---

1. Notice is hereby given that Harry J. Rubin and Margaret C. Rubin, the above-named Appellants, hereby appeal to the Supreme Court of the United States from the final judgment entered in this action on June 19, 1980.

2. This appeal is taken pursuant to 28 U.S.C., §§1257 and 2101(c).

Dated this 23rd day of July, 1980.

/s/ Harry J. Rubin
Harry J. Rubin
Liverant, Senft and Cohen
15 South Duke Street
P. O. Box 72
York, PA 17405
Attorney for Appellants

CERTIFICATE OF SERVICE

I, Harry J. Rubin, a member of the Bar of the Supreme Court of the United States, hereby certify that I served the foregoing Notice of Appeal on all parties to this proceeding in compliance with Rule 28.3 of the Rules of the Supreme Court of the United States by depositing such Notice of Appeal in a United States mailbox, with first-class postage prepaid, addressed to counsel of record as follows:

On Appellee Sidney Glaser:

To: Hon. Harry Haushalter
Deputy Attorney General
Department of Law and Public Safety
State of New Jersey
35 West State Street
Trenton, NJ 08625

On Appellee A. James Reeves:

To: Frank A. Buczynski, Jr., Esquire
Shackleton, Hazeltine, Zlotkin and Dasti
22nd Street and Long Beach Boulevard
Ship Bottom, NJ 08008

/s/ Harry J. Rubin
Harry J. Rubin
Liverant, Senft and Cohen
15 South Duke Street
P.O. Box 72
York, PA 17405

Dated: July 23, 1980

No. 80-401

Supreme Court, U. S.
FILED
OCT 14 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

HARRY J. RUBIN and MARGARET C. RUBIN,

Appellants,

vs.

SIDNEY GLASER, Director of the Division of Taxation, Department of the Treasury, State of New Jersey, and A. JAMES REEVES, Tax Assessor, Long Beach Township, Ocean County, New Jersey,

Appellees.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

JOHN J. DEGNAN,
Attorney General of New Jersey,
Attorney for Appellee, Sidney Glaser, Director of the Division of Taxation, Department of the Treasury of the State of New Jersey,
State House Annex,
Trenton, New Jersey 08625.

STEPHEN SKILLMAN,
Assistant Attorney General,
Of Counsel.

HARRY HAUSHALTER,
Deputy Attorney General,
On the Brief.

Adams Press Corp., 5 Commerce Street, Newark, N. J. 07102—(201) 623-8611

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Cases Cited

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Statutes Cited

N.J.S.A. 54:3.80 (Homestead Rebate Act) 2-4, 7-11

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Rule Cited

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16(1)(b) 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-401

HARRY J. RUBIN and MARGARET C. RUBIN,

Appellants,

vs.

SIDNEY GLASER, Director of the Division of Taxation, Department of the Treasury, State of New Jersey, and A. JAMES REEVES, Tax Assessor, Long Beach Township, Ocean County, New Jersey,

Appellees.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

Motion to Dismiss

Pursuant to Rule 16(1)(b) of this Court, the Attorney General of the State of New Jersey, on behalf of the Appellee, Sidney Glaser, Director, Division of Taxation, hereby moves to dismiss this appeal because it does not present a substantial federal question.

Question Presented

Does the Privileges and Immunities Clause of Art. IV, § 2, cl. 1 or the Equal Protection Clause of the Fourteenth Amendment preclude New Jersey from providing an annual tax rebate under the Homestead Rebate Act, N.J.S.A. 54:3.80 *et seq.*, to owners of property which is used as a principal place of residence while excluding the owners of vacation homes and other property not used as a principal place of residence from qualifying for the rebate.

Statement of the Case

The issue presented in this case relates to the validity of the Homestead Rebate Act (the "act"), which provides a rebate of property taxes imposed upon the owner-occupied principal place of residence. The act states, in pertinent part, that:

> "Every citizen and resident of this State shall be entitled, annually, to a homestead rebate on a dwelling house and the land upon which such dwelling house is situated, or on a dwelling house assessed as real estate situated on land owned by another or others *which constitutes the place of his domicile and which is owned and used by him as his principal residence.*" (emphasis added). N.J.S.A. 54:4-3.80(a).

The act provides that the rebate is payable only to the owner of property which constitutes his principal place of residence. The rebate is, therefore, not a general reduction of property taxes nor is it directed at reducing property taxes imposed on residential property. Rather, the statute explicitly limits the rebate to those properties which are owner-occupied and utilized as a principal place of residence.

The act became law in 1976 as part of a package of tax reform legislation which included the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 *et seq.*, whose revenues are the source for the rebate funds. N.J.S.A. 54A:9-25. Real property taxes are imposed in the State of New Jersey under a Local Property Tax Act, N.J.S.A. 54:4-1 *et seq.*, pursuant to which property taxes are assessed and collected by each taxing district in the State. The rebate act is a State law providing local property tax relief to a property owner's principal place of residence by use of State income tax revenues. The rebate act, therefore, does not affect the local property tax revenues collected by the municipalities.

The appellants, Harry J. and Margaret C. Rubin, are domiciliaries of the State of Pennsylvania and thus maintain their principal place of residence in that State. The Rubins also maintain a second home in Long Beach Township, Ocean County, New Jersey, which is used as a vacation retreat. The appellants are both employed in Pennsylvania and are not subject to the New Jersey Gross Income Tax. As Pennsylvania domiciliaries, the appellants are registered to vote in Pennsylvania and their children attend school in that State.

The appellants filed an application for a 1977 homestead rebate with the Long Beach Township assessor on October 22, 1976. Following the denial of the application, the appellants challenged the denial by filing a petition of appeal with the Ocean County Board of Taxation, which affirmed the assessor. Appellants appealed the County Board judgment to the Division of Tax Appeals, which entered a judgment on December 21, 1977 dismissing the appeal. The matter was further appealed to the New Jersey Superior Court, Appellate Division. The Appellate Division affirmed the judgment of the Division of Tax Appeals in

an opinion dated February 1, 1979 and reported at 166 N.J. Super. 258, 399 A. 2d 984 (App. Div. 1979). On June 19, 1980 the Supreme Court of New Jersey, in a comprehensive opinion reported at 83 N.J. 299, —— A. 2d —— (1980), sustained the validity of the Homestead Rebate Act.

ARGUMENT

The appeal should be dismissed because the appellants have not presented a substantial federal question.

A. The Homestead Rebate Act is consistent with the requirements of the Privileges and Immunities Clause of Article IV of the United States Constitution because it was enacted to provide tax relief to the owner of his principal place of residence and thereby promote the concept of homeownership.

The Privileges and Immunities Clause of Art. IV, § 2, cl. 1 of the United States Constitution establishes a norm of comity (*Austin* v. *New Hampshire,* 420 U.S. 656, 660 (1975)), so as,

> ". . . to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned." *Paul* v. *Virginia,* 75 U.S. 168, 180 (1869).

In its recent expression of the scope of the Privileges and Immunities Clause, this Court noted the amendment was adopted to insure that a basis of equality would prevail among the states with respect to their treatment of each other's residents. *Hicklin* v. *Orbeck,* 437 U.S. 518, 523-524 (1978). The purpose of the Clause was ". . . to prevent a

State from imposing unreasonable burdens on citizens of other States . . ." regarding matters touching on ". . . the validity of the Nation as a single entity. . . ." *Baldwin* v. *Montana Fish & Game Commission,* 436 U.S. 371, 383 (1978). Among the subjects concerning which the states must legislate in a manner consistent with this principle is the taxation of nonresidents. *Austin* v. *New Hampshire, supra.*

The Privileges and Immunities Clause was not meant to preclude states from legitimately enacting laws that established justifiable classifications affecting residents differently than non-residents.

> "Like many other constitutional provisions, the privileges and immunities clause is not an absolute. It does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relation to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures." *Toomer* v. *Witsell,* 334 U.S. 385, 396 (1948).

Consistent with this policy, the Court has sustained, under the Privileges and Immunities Clause, tax classifications relating to residency which had a valid independent purpose other than mere residency. In *Travellers' In-*

surance Company v. *Connecticut,* 185 U.S. 364, (1902), this Court upheld a Connecticut tax imposed upon the owners of stock of domestic corporations which permitted residents owning such stock to deduct an allocable share of real estate taxes paid by the corporation from the fair market value of the stock while not according that same deduction to nonresidents. This taxing scheme was sustained on the basis that the non-residents were being taxed in proportion to the benefits bestowed upon them by the taxing state.

> "It is enough that the state has secured a reasonably fair distribution of burdens and that no intentional discrimination has been made against nonresidents." 185 U.S. at 371.

In *Shaffer* v. *Carter,* 252 U.S. 37, 56-57 (1920), the Court upheld a section of the Oklahoma income tax which allowed residents to deduct from their gross income losses incurred not only within Oklahoma but also outside the State while nonresidents were permitted to deduct only losses incurred within the State. See also *Davis* v. *Franchise Tax Board,* 71 Cal. App. 3d 998, 139 Cal. Rptr. 797 (Cal. Ct. of App. 1977), dismissed for want of substantial federal question, 434 U.S. 1055 (1978), sustaining California income tax provision permitting only residents to utilize income averaging statute; *Wheeler* v. *State,* 127 Vt. 361, 249 A. 2d 887 (Vt. Sup. Ct. 1969), dismissed for want of substantial federal question, 396 U.S. 4 (1969), affirming differential tax rates placed on residents as opposed to non-residents under the Vermont income tax; *Anderson* v. *Tiemann,* 182 Neb. 393, 155 N.W. 2d 322 (Neb. Sup. Ct. 1967), dismissed for want of substantial federal question, 390 U.S. 714 (1968), upholding the validity of permitting only residents to take food sales tax expenses as a credit under the Nebraska income tax; *Berry* v. *State Tax Commission,* 241

Ore. 580, 397 P. 2d 780 (Ore. Sup. Ct. 1964), dismissed for want of substantial federal question, 382 U.S. 16 (1965), affirming the propriety of a provision under the Oregon income tax law which allowed only residents to deduct certain personal expenses related to their place of residency.*

The Homestead Rebate Act, providing a tax rebate limited to property used as the principal residence of the owner, is clearly consistent with these principles. The focus of the rebate statute is on the concept of principal place of residency and not, as appellants maintain, on New Jersey residency. As correctly identified by the Supreme Court of New Jersey, principal residence is clearly the operative provision of the statute triggering qualification for the rebate payment. Appellants, therefore, have the same option as any other individual maintaining a vacation home in this State, namely the privilge of utilizing said home as the principal residence. Had the Rubins maintained their Long Beach Township property as their principal place of residence, they would have unequivocally qualified for the rebate. The facts of this case, however, are otherwise and firmly establish that appellants did not occupy the Long Beach Township property as their principal residence and thus were not entitled to the rebate for said property.

The homestead rebate also serves important public purposes which are unrelated to nonresidents. The New

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* Appellants' contention that the holding in these cases is limited to excise taxes and not to property taxes is unsupported and is clearly without constitutional significance in the context of the Privileges and Immunities Clause. Moreover, since the Homestead Rebate Act is funded by income tax revenues and not by local property tax revenues, the statute could have easily been formulated to grant the rebate to the homeowner in the form of a direct credit or deduction under the New Jersey Gross Income Tax Law.

Jersey Legislature, concluding that it was in the public interest to decrease the impact of unduly high local property taxes which operate as an impediment to homeownership, determined to utilize a portion of gross income tax revenues to reduce property tax assessments upon owner-occupied principal places of residence. At the same time, the New Jersey Legislature evidently did not perceive the same need to encourage ownership of property for vacation, recreation and other purposes unrelated to a family maintaining a homestead for itself. It is also highly significant that, since the intent of the Homestead Rebate Act is to provide relief from property taxes paid on the family homestead rather than to discriminate against nonresidents, it is unavailable to a substantial number of New Jersey residents. Thus, the rebate is generally not available with respect to commercial and industrial property owned by New Jersey residents and is also unavailable to any of the New Jersey residents who maintain their principal places of residence in the numerous renter-occupied units in this State. These renters include many New Jersey residents who maintain their principal places of residence in rented apartment units while simultaneously owning residential property which they occupy on a seasonal basis. Such residents are in the same tax posture as the appellants and do not qualify for the homestead rebate, since the only residential property they own in New Jersey is not their principal residence.

Appellants have failed to demonstrate that the denial of the homestead rebate with regard to their vacation home in New Jersey has exceeded the constitutional parameters of the Privileges and Immunities Clause. This Court has conclusively established in its prior decisions the propriety on the part of a taxing state to properly condition tax benefits on residency as long as such tax preference

advanced a valid state interest. The Homestead Rebate Act clearly evidences New Jersey's valid interest in promoting the concept of homeownership. Therefore, the present case, as it relates to the Privileges and Immunities Clause, does not involve unsettled constitutional questions requiring the further review by this Court.

B. The Homestead Rebate Act is consistent with the Equal Protection Clause of the Fourteenth Amendment because it serves the rational purpose of providing tax relief to the owner-occupier of a principal place of residence.

It is fundamental to equal protection analysis that the Legislature has a wide range of discretion in classifying persons for different treatment and that such discretion is especially broad in the field of taxation:

> ". . . it has . . . been pointed out that *in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.* Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . ." (emphasis added.) *Madden* v. *Kentucky,* 309 U.S. 83, 87-88 (1940).

The rationale for this broad view of government's taxing powers has been explained as follows:

> "The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privilege of living in an organized society, established and safeguarded by the devotion

> of taxes to public purposes. . . . Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good. This court has repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer, or that he can resist the payment of the tax because it is not expended for purposes which are peculiarly beneficial to him." *Carmichael* v. *Southern Coal & Coke Co.,* 301 U.S. 495, 522-523 (1937).

This Court has, therefore, established that a state may classify the subjects of taxation for differing treatment upon any basis which bears a rational relation to a legitimate end of government. *Lehnhausen* v. *Lake Shore Auto Parts Co.,* 410 U.S. 356 (1973); *Allied Stores of Ohio, Inc.* v. *Bowers,* 358 U.S. 522 (1959). Furthermore, this broad power of the Legislature to structure a state's tax system is not constricted simply because the attacking party happens to be a nonresident. *General America Tank Car Corp.* v. *Day,* 270 U.S. 367 (1926); *Shaffer* v. *Carter, supra; Travelers Insurance Company* v. *Connecticut, supra.* Therefore, the appellants' challenge to the Homestead Rebate Act under the Equal Protection Clause can only be sustained if there is no rational basis for the statute.

The same legal basis which establishes the validity of the rebate statute under the Privileges and Immunities Clause supports *a fortiori* the propriety of the statute under the Equal Protection Clause. The concept of providing tax relief to the homeowner and thereby encouraging homeownership in New Jersey clearly constitutes a valid

and rational legislative purpose which passes muster under equal protection analysis. Therefore, the applicable considerations which establish the constitutionality of the Homestead Rebate Act under the Privileges and Immunities Clause similarly establish the validity of the statute under the Equal Protection Clause and conclusively demonstrate that there is no need for further review of this question by this Court.

CONCLUSION

It is respectfully submitted, therefore, that the appellants have not presented any substantial federal questions which warrant the further attention of this Court and that this appeal should be dismissed.

Respectfully submitted,

JOHN J. DEGNAN,
Attorney General of New Jersey,
Attorney for Appellee, Sidney Glaser, Director of the Division of Taxation, Department of the Treasury of the State of New Jersey,
State House Annex,
Trenton, New Jersey 08625.

STEPHEN SKILLMAN,
Assistant Attorney General,
Of Counsel.

HARRY HAUSHALTER,
Deputy Attorney General,
On the Brief.